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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/930,702	02/13/1998	THIERRY WETZEL	CPW50075/US	3366

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EXAMINER

SEIDLECK, BRIAN K

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 01/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/930,702

Applicant(s)

WETZEL ET AL.

Examiner

Brian K. Seidleck

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 24-27 and 29-34 is/are rejected.
- 7) ☒ Claim(s) 28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Papers Received

1. Receipt is acknowledged of applicant's Amendment and Response filed 6/13/2001.

Claims 24-34 are pending.

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 24-27, 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hague et al (5,543,074, hereinafter "Hague"); and/or Unilever (EP 0 485 212 A1); and in further view of France et al (U.S. Pat. No. 4,198,311, hereinafter "France").

Hague teaches a composition suitable for cleansing and conditioning of the skin or hair.

See Col. 2, lines 21-24. As to the ingredients, Hague recites an isethionate surfactant (Col. 4,

lines 66-67); sulphosuccinate (Col. 5, lines 12-17); fatty alcohol (Col. 3, lines 45-47); zantham gum (Col. 4, lines 45-49); and silicone oils (Col. 3, lines 38-40). The surfactant component is present in an amount of 2 to 40% and the balance of water for the dispersion overlaps that of the present invention. See Col. 8, lines 15-40. The dispersion is formed by adding the surfactant composition to water at 50°C. Id.

Hague is silent as to the state (i.e. solid, liquid or semi-solid) of the surfactant portion, prior to its combination with the remaining ingredients (oil and water). However, it is noted that the present manufacturing examples at pages 10-11 (i.e. method 3), disclose an initial solid (flakes) surfactant mixture, and the flakes are dispersed, then oil and water additives are added. Further, France teaches that cleansing surfactants are commercially available in solid or semi-solid form, including flakes. See Col. 5. Therefore, in the absence of unexpected results, one of ordinary skill in the art would have motivated to use a liquid form or solid form of a cleansing surfactant, since each are commercially available and interchangeable. One of ordinary skill would have been motivated to first dissolve the flaked surfactant prior to its addition to the remaining ingredients to ensure a homogenous.

Similarly, Unilever teaches a personal foaming composition, comprising isethionates, sulphosuccinate, fatty alcohols, silicone oils, and polyethylene glycols. See pages 2-5. As to the present method claims, wherein the pre-formed surfactant portion is made, Unilever teaches that pre-mixes of the components may be made for purposes of convenience. See page 4. The applicants, in their response argue that the present method results in easier formulation, and therefore is patentably distinguishable over the prior art. However, it is the examiner's position that Unilever's statement regarding pre-mixing for convenience, renders applicants method

obvious. It is the examiner's position that one of ordinary skill in the art would have been motivated to pre-mix certain components for purposes of convenience and that such practice is routine in the art, and thereby obvious, absent a showing of criticality.

Further, as stated above, France teaches that cleansing surfactants are commercially available in solid or semi-solid form, including flakes. See Col. 5. Therefore, in the absence of unexpected results, one of ordinary skill in the art would have motivated to use a liquid form or solid form of a cleansing surfactant, since each are commercially available and inter-changeable. One of ordinary skill would have been motivated to first dissolve the flaked surfactant prior to its addition to the remaining ingredients to ensure a homogenous mixture.

Response to Arguments

5. Applicant's arguments filed 6/13/2001 have been fully considered but they are not persuasive. It remains the examiner's position that present Claim 24, is not patentably distinct over the cited art of record, and the examiner relies on the arguments above in the rejection for claims 24-27 and 29-34 in response to applicant's arguments. However, the additional limitations of dependent claim 28 clearly recite the homogenizing step of the mixture (surfactant and fatty amphiphile) and the subsequent addition of the emollient (oil/wax) to produce the ultimate dispersion.

Allowable Subject Matter

6. Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 28 clearly recites the method steps, which results in a more stable surfactant dispersion as shown in Table 1 of the present specification.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Correspondence

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Brian K. Seidleck** whose telephone number is **(703) 305-4448**. The examiner can normally be reached **Monday, Tuesday, Thursday and Friday from 6:30am to 5:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K. Page**, can be reached on **(703) 308-2927**. The official fax numbers for Technology Center 1600 are **(703) 305-3592 and (703) 308-4556**. The unofficial fax number is **(703) 308-7921**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center receptionist** whose telephone number is **(703) 308-1235 or (703) 308-1234**.

Brian K. Seidleck
Patent Examiner
January 2, 2002


THURMAN K. PAGE
SUPERVISOR, PATENT EXAMINER
TECHNOLOGY CENTER 1600